UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	Docket No. ER21-1790-000

PROTEST OF POWEREX CORP.

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Pursuant to Rule 212 of the Rules of Practice Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), Powerex Corp. ("Powerex")[1] hereby submits this protest in response to the April 28, 2021 filing of the California Independent System Operator Corp. ("CAISO"), which seeks Commission approval of proposed tariff amendments that modify the priority and curtailment procedures for export, load and wheeling schedules.

Powerex does not oppose the elements of the CAISO proposal regarding the scheduling priority of exports of energy from the CAISO BAA. The CAISO's proposed export-related measures uphold the foundational principle that external entities that procure forward supply from a physical resource should be able to rely on receiving that supply—including having access to transmission service to export that supply—even when the CAISO BAA faces a supply shortage. In contrast, CAISO's proposal does not apply this principle to physical resources located outside the CAISO BAA that are seeking to wheel through the CAISO BAA. As described further below, the proposed revisions to the priority applied to wheel-through transactions in the day-

[1] Powerex is concurrently filing a doc-less motion to intervene.

ahead and real-time markets are contrary to long standing principles of open access and comparability, undermine the reliability of entities in the broader western region, and must be rejected.[2]

I. INTRODUCTION

The fact that CAISO is facing reliability challenges is not in dispute. CAISO's recently released summer assessment highlights the significant risk CAISO faces this summer that it will be unable to reliably operate the grid during hours of greatest system stress. Indeed, CAISO calculates a 4.6% probability of a load shedding event under its most favorable "baseline" set of summer assumptions,[3] with that probability rising to 12.4% under a "sensitivity" case that reflects import levels closer to those observed during last summer's heat wave.[4] These assessments indicate the potential for significantly greater reliability challenges than experienced last summer.[5]

The causes of these reliability challenges are similarly well understood. Like many systems in the Western Interconnection, the CAISO balancing authority area ("BAA") must import energy to serve load during peak conditions. Although such

[2] *Cal. Indep. Sys. Operator Corp.,* Tariff Amendment to Implement Market Enhancements for Summer 2021 – Load, Export, and Wheeling Priorities, Docket No. ER21-1790-000 (filed Apr. 28, 2021) ("Filing").

[3] Cal. Indep. Sys. Operator Corp., 2021 Summer Loads and Resources Assessment at Tbl. 4 (May 21, 2021) ("CAISO 2021 Summer Assessment"), *available at: http://www.caiso.com/Documents/2021-Summer-Loads-and-Resources-Assessment.pdf*.

[4] The sensitivity case caps imports in August at 6,095 MW. CAISO 2021 Summer Assessment at 11. During the periods of greatest stress during the August 2020 reliability events, net imports were frequently less than this level.

[5] *See* Cal. Indep. Sys. Operator Corp., *2020 Summer Loads and Resources Assessment* at Tbl. 4 (May 15, 2020) (estimating a 0.2% probability of "unserved energy" under its "base case," and 1.6% under its "sensitivity case.")

imports can be committed on a forward basis, as is routinely done by other BAAs in the west, CAISO's analysis shows that the level of forward contracts for Summer 2021 under California's Resource Adequacy ("RA") program is well below the level of imports that are likely to be needed under projected summer peak load conditions.[6]

Thus, even with *perfect* performance of *all* RA import contracts, the CAISO BAA is likely to require additional spot market imports to maintain reliability. In reality, there is little reason to be confident that all RA import contracts will fully perform during peak summer conditions given the permissiveness of the California Public Utilities Commission's ("CPUC") RA framework, which allows import RA requirements to be met with "paper capacity" contracts: import RA arrangements that are not supported by identified physical resources and do not require power to be delivered on firm transmission to the CAISO boundary.[7]

As the CAISO has recognized, the result of a forward procurement framework that does not commit sufficient capacity to meet system needs and allows "paper capacity" to meet a substantial portion of procurement requirements is that the reliability of the CAISO BAA during peak summer conditions will be inextricably tied to the availability of energy in the western region's day-ahead and real-time spot

[6] CAISO 2021 Summer Assessment, Fig. 4 (indicating a need for 1,002 MW of "economic imports above max RA contracts" in order to meet the "illustrative 8/18/20 day-ahead forecast [of peak demand] plus 6% operating reserve and 7.5% forced outage")

[7] *See, e.g.,* Cal. Pub. Util. Comm'n, Comments of the Cal. Indep. Sys. Operator Corp., R. 17-09-020 (July 19, 2019) (recommending modifying RA framework to require import RA contracts to be firm and supported by firm transmission to "minimize the risk of speculative supply from resource adequacy imports").

markets and transfer capability across the delivery path.[8] Unfortunately, there are numerous reasons to be concerned that the volume of uncommitted energy available for purchase in the spot markets for import into the CAISO BAA will be highly limited this summer.

First, the Northwest (along with California) is experiencing very dry conditions, reducing the forecast production from the region's hydroelectric resources that historically have comprised a large portion of summer imports to the CAISO and the Southwest sub-regions. For instance, as of the date of this protest, hydro conditions for the Columbia River are projected to be below (*i.e.,* drier than) the 20th percentile of the 61 year historical record, with projected flows nearly 20% below average.[9] In contrast, during last year's reliability challenges, the Columbia River experienced above-average hydro conditions.[10]

Second, a substantial amount of Northwest supply has already been committed on a forward basis to load-serving entities ("LSE") outside of the CAISO BAA, particularly to LSEs in the Southwest. Following the reliability challenges experienced last summer, numerous LSEs in the Southwest took steps to secure forward supply arrangements they could count on to meet their peak needs during

[8] *See* Cal. Pub. Util. Comm'n, Track 3B.1 Proposals of the Cal. Indep. Sys. Operator Corp., R. 19-11-009 at 2 (filed Jan. 28, 2021) ("CAISO January 28, 2021 Track 3B.1 Proposal") (noting its concerns that under the current procurement framework, "energy contracts . . . can be transferred using low priority non-firm delivery across the entire delivery path. . . . [And there] is no assurance that these bilateral energy purchases are anything but excess energy from resources that were never committed to California in the first instance and have no express obligation to sell or hold capacity for California.").

[9] U.S. National Oceanic and Atmospheric Administration, Northwest River Forecast Center, *Water Supply Period Rankings*, *available at*: https://www.nwrfc.noaa.gov/water_supply/ws_ranking.cgi?id=TDAO3&per=APR-AUG.

[10] *Id.*

this upcoming summer. In contrast to the minimum requirements under California's RA framework, these Southwest LSEs contracted with suppliers that were able to demonstrate that they had the physical supply and firm transmission rights necessary to support their commitments, and Southwest LSEs sought to include specific provisions within their contracts that:

- identify the physical generation resources supporting the contracted supply deliveries;
- specify that the capacity committed was expected to be surplus to the needs of the source BAA, and would not be committed to support any other transaction; and
- commit to delivering the output of that capacity on firm open access transmission tariff ("OATT") transmission service.

Powerex's experience has been that while some LSEs in the CAISO BAA voluntarily took steps similar to those taken by the Southwest LSEs, many CAISO LSEs made the choice[11] not to compete for such supply, presumably choosing to meet their RA requirements through paper capacity contracts permitted under the CPUC's rules.

Third, to the extent there is uncommitted energy available in the region's spot markets, purchasers seeking to acquire energy for delivery to the CAISO BAA will face competition from purchasers delivering to other BAAs, with the latter generally representing more attractive sales opportunities for suppliers than sales into the CAISO markets.[12]

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[11] In late 2020, Powerex issued a request for proposals offering forward firm supply backed by identified surplus physical capacity, to be delivered on Firm transmission service. It received bids from LSEs in the Northwest, the Southwest, and even some in California, but notably it received no bids from any LSE inside the CAISO BAA.

[12] For example, as CAISO openly acknowledged in a recent filing, "[w]hen system resources are constrained across the west, there is no guarantee that [any] "excess energy" will still be available to meet California LSE's needs. Instead, such energy will more likely flow to the

Powerex acknowledges that the CAISO has worked tirelessly to attempt to avoid going into this summer with such extensive reliance on spot market purchases to serve its load. For at least the last two years, senior CAISO personnel have repeatedly warned of the capacity shortfalls associated with insufficient forward supply procurement.[13] The CAISO has also sought to strengthen the rules under California's RA program to require import contracts to represent real "steel in the ground" that can actually be delivered to the CAISO BAA to serve load. CAISO soberly outlined two specific supply and delivery challenges it anticipates in tight conditions in its January 2021 filing with the CPUC:

> During challenging system conditions across the west—when the CAISO expects limited resource availability and most needs resource adequacy imports to be delivered—there is a substantial risk (1) the import may not be deliverable because transmission curtailment due to the use of low priority transmission, or (2) the import energy will be delivered elsewhere because it was not exclusively committed to California LSEs.[14]

But despite the CAISO's consistent and unflinching warnings, only limited progress has been made, as both CPUC staff and California's largest investor-owned utilities have aligned in steadfast opposition to proposals that would require all import RA contracts to identify the physical resources being committed and require firm transmission service to the CAISO boundary.

Thus, despite extensive efforts, the CAISO will enter this summer knowing that much of the Northwest surplus supply for this summer has been committed to serving

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native load of the entities that paid for that capacity upfront or to the highest bidder." CAISO January 28, 2021 Track 3B.1 Proposal Track 3B.1 Proposal, at 2-3.

[13] *See e.g.,* CAISO January 28, 2021 Track 3B.1 Proposal Cal. Pub. Util. Comm'n, Track 1 Proposal of the Cal. Indep. Sys. Operator Corp., R.19-11-009 (filed Feb. 28, 2020).

[14] CAISO January 28, 2021 Track 3B.1 Proposal at 3.

customers outside the CAISO BAA, and that it will face strong competition from purchasers outside of the CAISO BAA for any remaining uncommitted supply that may become available in the western region's spot markets.

It is against this backdrop that the CAISO now proposes to change the rules for providing CAISO transmission service for deliveries of Northwest supply to customers in Southwest BAAs. In particular, with the failure of the CPUC to close the procurement gaps in its RA program, the CAISO's proposal attempts to reduce its anticipated Summer 2021 supply shortfalls by crafting a set of tariff provisions that will effectively upend transmission priorities across the western region, with the result that external supply and external transmission capacity will be "freed up" in the day-ahead and real-time timeframes to support the "paper capacity" supply contracts held by CAISO LSEs and the CAISO's own last-in-time procurement actions.

Under the CAISO's current market rules, CAISO transmission service is provided to those transactions willing to compete to acquire an award in the CAISO's day-ahead and real-time markets. Thus, by submitting a self-schedule (*i.e.*, price-taker bid) in the day-ahead timeframe for wheel-through service over the CAISO grid, Northwest supply that has been committed on a forward basis to Southwest LSEs can expect to obtain the transmission service over the CAISO grid necessary to deliver that supply to their Southwest customers.

But the CAISO's proposal would deny or curtail transmission service to these wheel-through transmission customers—despite their submission of price-taker bids—and instead make transmission service available to less economically priced and/or later-scheduled imports that serve CAISO load—imports that did not successfully compete for awards (and the CAISO transmission service that accompanies such awards) in the day-ahead market. The curtailment of CAISO transmission service to wheel-through customers will have three key "upstream" effects that manifestly benefit CAISO load in the CAISO BAA the expense of customers across the Southwest:

- Stranding Northwest physical supply that has been committed on a forward basis to serve customers in the Southwest, leaving that supply with no accessible destination other than the CAISO BAA;
- Preventing external firm OATT transmission rights from the generation source to the CAISO boundary from being used to support deliveries associated with forward commitments to the Southwest, thus causing the unused transmission capacity to be released by external transmission service providers as hourly non-firm service; and
- Deterring customers in the Southwest from competing for forward and spot market energy in the Northwest in the first place, due to an inability to confidently obtain CAISO transmission service on a non-discriminatory basis.

The CAISO's proposal cannot be viewed as a set of narrowly-crafted measures that are "necessary to avoid wheeling through self-schedules 'crowding out' … RA imports using the interties"[15] That is, the additional imports into the CAISO BAA resulting from this proposal ***will not*** represent supply and transmission arrangements that have already been secured by CAISO LSEs (or the CAISO), and that simply need access to transmission service on the CAISO grid as the "final segment" required for delivery to serve CAISO load. Rather, the additional imports will represent supply that became available for purchase during the spot market timeframe ***only because*** the CAISO denied transmission access to deliver that same

[15] Filing, Transmittal at 7.

energy to the Southwest; and/or these additional imports will be delivered to the CAISO boundary on external lower priority hourly non-firm OATT transmission service that became available ***only because*** the CAISO's denial of transmission access to a wheeling-through customer caused a firm transmission reservation on a neighboring OATT system to go "unused."

The CAISO's proposal, if accepted, would compensate for the lack of adequate forward supply procurement for the CAISO BAA by ensuring that, when the CAISO BAA faces a supply shortage, spot market imports into the CAISO will be able to "step ahead" of the forward supply competitively procured to serve customers in Southwest BAAs. *Every* additional MW of imports delivered into the CAISO BAA resulting from this proposal is a MW that the CAISO will have prevented from flowing to another BAA. Thus accepting the CAISO's proposal would shore up the reliability of the CAISO BAA at the direct expense of reliability in other BAAs.

These outcomes are precisely what the Commission has worked for decades to prevent: the improper use of transmission access as a means to gain advantage in the wholesale energy and capacity market. For that reason, the Commission must reject the CAISO's proposal regarding import and wheel-through priorities.

II. PROTEST

A. CAISO's Filing Fails To Accurately Describe The Impact of Its Proposed New Priority And Curtailment Processes

The CAISO's filing in this docket is manifestly deficient. Although the CAISO provides a substantial amount of detail regarding the tariff revisions it proposes, its application contains multiple statements that collectively can result in a misunderstanding of the *status quo*, and it omits a clear discussion of *how* the proposed revisions—along with modified business practices—will impact the CAISO's existing sequential markets and the economic dispatch model that has long served as the cornerstone of its market. The discussion that follows provides an overview of the salient foundational elements of the CAISO market, and thereafter sets out what CAISO's filing omits in describing how the revisions will impact existing markets and processes.

The CAISO grid is an essential component of the western grid, with approximately 5,000 MW of transfer capability on the southern portions of the California-Oregon Intertie (COI) and the Pacific DC Intertie (PDCI)—the two primary multi-state transmission corridors linking the Northwest to California and the Southwest. The transmission service that CAISO provides over these corridors facilitates deliveries to more than a dozen external transmission providers, making these two corridors vital delivery paths for LSEs in both California and the Southwest, which have historically procured surplus capacity of Northwest resources for the summer. The manner in which CAISO provides transmission access across its portion of these two interstate corridors can determine which customers in the west will receive power, and which ones will not.

In contrast to other transmission providers in the west, who operate under OATTs that provide for network and point-to-point service, the CAISO market design provides a "single 'daily' transmission service that is available on a non-discriminatory basis to all eligible customers on a day-to-day basis."[16] Under this paradigm, "all

[16] *Cal. Indep. Sys. Operator Corp.,* 123 FERC ¶ 61,180 at P 7 (2008)

energy transmitted under the [CAISO Tariff] is treated as a 'new firm' use and is scheduled on a day-to-day basis."[17] Rather than requiring customers to reserve transmission far in advance of expected deliveries, the CAISO markets from their inception have relied on price-based competition in the day-ahead and real-time markets to guarantee open access and ensure that all customers have comparable access to the grid. Specifically, by submitting self-schedules or economic bids into the market, both in-state and out-of-state CAISO market participants compete to obtain "physical rights to inject energy at a source and withdraw energy at a sink."[18] In other words,

> under [the CAISO] transmission service model, scheduling coordinators submit bids (including self-schedules) for the supply or demand for energy to the CAISO. Scheduling coordinators have equal access to all available capacity every day and can make changes to their bids on an hourly basis . . . The CAISO utilizes a bid-based, security constrained economic dispatch/redispatch using the full capacity on the grid.[19]

The CAISO's approach to allocating available transmission via market awards has three key characteristics:

- There are no physical scheduling rights available on a forward basis. Access to schedule delivery of energy or capacity on the CAISO transmission system must be obtained by securing awards for energy or capacity in the day-ahead or real-time timeframe.

- Transmission access is allocated on a non-discriminatory basis to the most economic uses of the grid, as reflected in the energy or capacity bid and offer prices submitted by participants—with "price taker" or self-scheduled bids serving as the most economically-priced bids in each market run.

- Transmission access awarded by the CAISO in the day-ahead market has priority over requests for new service in the real-time market and is not

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[17] *Id.*

[18] *Cal. Indep. Sys. Operator Corp.,* 116 FERC ¶ 61,274 at P 898 (2006).

[19] Cal. Indep. Sys. Operator Corp., 123 FERC ¶ 61,180 at P 7.

> involuntarily unwound in order to re-allocate transmission service to a different purpose or to different transmission customers.

While customers across the west have known that contractual rights to CAISO transmission service cannot be obtained on a forward basis, they have relied upon the commitment under the CAISO tariff to make such transmission service available in the day-ahead and real-time timeframe on a non-discriminatory open access basis to those customers that successfully compete to obtain a market award based on the economics of their energy or capacity bids.

1. The CAISO Proposes to Replace Competition for Transmission Service with a Preferential Allocation to Imports when the CAISO BAA Faces Supply Shortages

The CAISO proposal fundamentally alters this framework in favor of an approach that would restrict the availability of transmission to support wheel-through schedules whenever the CAISO BAA faces supply shortages, in order to make additional transmission service available instead for transactions that sink in the CAISO BAA. CAISO's proposed approach abandons two of the pillars of its open access framework, namely that:

- Transmission access should be awarded to the most economic bids submitted in each of its sequential temporal markets; and
- Transmission allocated through day-ahead market awards should have priority over new requests for transmission service in real-time.

The CAISO proposal can be viewed as comprising three key elements that will change which of CAISO's customers receive transmission service over the CAISO grid when the CAISO BAA is facing supply shortages.

First, when it initially allocates available transmission capability in the day-ahead timeframe, the CAISO will preferentially grant service to self-scheduled (*i.e.,* price-taker) imports serving load in the CAISO BAA ahead of self-schedules for "standard" wheel-through transactions (*i.e.,* for all wheel-through transactions that do not meet a very narrow set of criteria defined by CAISO). This is proposed to be achieved through "penalty prices" generally set out in CAISO's business practices that assign a lower value (and hence lower priority) to "standard" wheel-through transactions than to imports serving CAISO load.

Second, to the extent a wheel-through transaction has been awarded transmission service in the day-ahead market, the CAISO proposes to be able to involuntarily curtail or interrupt the award in order to re-allocate the transmission capability to imports in real-time needed to serve CAISO load. This can occur either automatically (through penalty prices) or manually through a proposed new "post-HASP allocation process" that authorizes CAISO operators to curtail wheel-through schedules that previously successfully competed for and were awarded transmission service from the CAISO.

Third, whereas the default will be for "standard" wheel-through self-schedules to have inferior access to transmission service relative to any and all imports, the CAISO proposes an advance registration process to grant "Priority Wheeling Through" access for a limited subset of transactions that are able to satisfy CAISO's criteria for demonstrating their intention to rely on wheel-through service in connection with a forward bilateral supply contract.

2. Wheel-Through Schedules Will Have Lower Priority Than More Expensive And Later In Time Imports When The CAISO BAA Faces Supply Shortages

The CAISO proposal will deny transmission service to "standard" wheel-through self-schedules[20] any time that the CAISO BAA faces supply shortages and requires additional imports on a congested path. Under a non-discriminatory organized market framework for the competitive allocation of transmission service, a price-taker bid to wheel power would not be treated as "less economic" than a price-taker bid to import power to serve load in the BAA. The CAISO's proposal, however, would give imports an advantage in competing for transmission service.

The table below shows four hypothetical examples illustrating how the CAISO proposal would preferentially award transmission service when the CAISO BAA faces a supply shortage, as well as how the CAISO proposal would depart from equitable outcomes under a non-discriminatory organized market framework for competitively allocating transmission service. Each example is discussed in greater detail in Appendix A.

[20] "Standard" wheel-through self-schedules are all wheel-through self-schedules that do not satisfy the CAISO's advance requirements for Priority Wheeling Through designation. *See* Section II.A.3, *infra.*

Access To Transmission Service For "Standard" Wheel-Through Transactions

DA Market Bids				
DA Standard Wheel-Through	**DA Import Bid**	**DA Load**	**Equitable Outcome**	**CAISO Proposal**
Self-scheduled standard wheel	Self-scheduled import	Self-scheduled load	Equal priority allocation between wheels and imports to meet CAISO load	**Import** receives DA market award
Self-scheduled standard wheel	Import offered at **$250/MWh**	Self-scheduled load	Wheel receives DA market award	**Import** receives DA market award
Self-scheduled standard wheel	Import offered at **$500/MWh**	Self-scheduled load	Wheel receives DA market award	Wheel receives DA market award but **may be curtailed in real-time** to make space for additional imports
Self-scheduled standard wheel	Self-scheduled import	Load **under-scheduled**	Wheel receives DA market award	Wheel receives DA market award but **may be curtailed in real-time** to make space for additional imports

Note: Based on the illustrative penalty prices in CAISO's Final Proposal, the CAISO will place a value on serving self-scheduled demand in the CAISO BAA that is $300/MWh greater than the value of delivering a wheel-through transaction that serves load in an external BAA. This means that the CAISO will award day-ahead transmission service to imports needed to meet self-scheduled demand at a price of up to $300/MWh before awarding service to a price-taker wheel-through schedule. This is reflected in the different outcomes under Example 2 and 3, above.

The examples highlight the two key ways in which the CAISO proposal will deviate from a competitive allocation of transmission service when the CAISO BAA faces a supply shortage:

1. The CAISO proposal would provide a **direct and explicit advantage to imports** over standard wheel-through self-schedules when competing for transmission service in the day-ahead market. This is the result of the CAISO proposal placing a greater value on serving load within the CAISO BAA than on serving load in external BAAs; *and*

2. Even when, notwithstanding this explicit disadvantage, a standard wheel-through self-schedule receives transmission service in the day-ahead market, the CAISO may disregard this competitive outcome and curtail the transmission service in real-time.

It is important to note that <u>none</u> of these outcomes are consistent with the CAISO's characterization that "the proposed tariff revisions are necessary to avoid wheeling through self-schedules 'crowding out' … RA imports[.]"[21] The above outcomes occur even when the imports were *not* RA imports, because the CAISO's proposal provides standard wheel-through transactions inferior transmission access relative to *any* imports—and not just to RA imports—when the CAISO BAA faces a supply shortage. The CAISO filing does not recognize, let alone provide justification for, this blatant discrimination against schedules that sink outside of the CAISO BAA.

3. The Criteria To Qualify As A Priority Wheeling Through Transaction Will Exclude a Wide Array Of Supply Arrangements And Discriminates Against External Purchasers And Suppliers

In an attempt to address the discriminatory transmission access afforded to standard wheel-through transactions, the CAISO proposes to define a new class of transactions—Priority Wheeling Through—which the CAISO asserts "will have a priority equal to CAISO load[.]"[22] The ability for customers to pre-qualify a transaction as a Priority Wheeling Through transaction will be highly restricted, however, with only a narrow set of supply arrangements likely to be eligible. In particular, the Priority Wheeling Through designation will be available only to transactions that demonstrate:

- "a firm power supply contract to serve an external Load-Serving Entity's load throughout the calendar month";
- "monthly firm transmission the external Load Serving Entity has procured … for Hours Ending 07:00 through 22:00, Monday through Saturday excluding NERC holidays, from the source to a CAISO [intertie]"; and
- Submit information to the CAISO demonstrating the above, and providing "the MW quantity of the power supply contract MW [sic]" by 45 days prior to the applicable month (or by June 29, 2021 for the months of July and August 2021).[23]

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[21] Filing, Transmittal Letter at 7.

[22] *Id*.

[23] *Id.*, Attachment B, Section 30.5.1(z).

The criteria developed by the CAISO would improperly exclude a range of expected forward supply arrangements entered into between Northwest suppliers and LSEs in the Southwest. For example, the CAISO's requirement would obviously exclude forward supply contracts that are executed less than 45 days prior to a calendar month. Furthermore, forward supply contracts may not necessarily require delivery "throughout the calendar month," but may instead be limited to a subset of peak hours across each day, or may be activated upon notice by the load-serving entity that it requires delivery of energy from the underlying capacity. And ensuring reliable delivery may not require procurement of monthly firm transmission on all segments of the delivery path (*e.g.*, if daily or hourly Firm service is generally available for a given term on a particular path).[24]

Notably, the criteria to be designated by the CAISO as a Priority Wheeling Through transaction are far more stringent than the requirements imposed on imports that will receive high priority transmission service. The CAISO filing uses language that suggests its proposed requirements will ensure that an external LSE has demonstrated "the same *long-term supply arrangements and dependence on using the CAISO grid* as native load or Priority Wheeling Through customers."[25] Yet the CAISO fails to acknowledge that the long-term supply arrangements for CAISO native load (*i.e.,* RA import contracts) are <u>not</u> required to identify any physical capacity and are <u>not</u> required to be delivered on firm transmission service to the

[24] Curiously, CAISO also appears to propose to require that the monthly firm transmission be procured by an external LSE, when it is commonplace for suppliers—rather than purchasers—to procure transmission service for all or part of a delivery path.

[25] Filing, Transmittal Letter at 10 (Emphasis added).

CAISO boundary. And under peak demand conditions, CAISO LSEs' dependence on using the CAISO system is not limited to receiving "long-term supply arrangements" at all, but instead includes receiving energy imports far beyond any threshold RA requirements or arrangements (including procurement by the CAISO itself through out-of-market actions).

The restrictive criteria proposed by the CAISO will fundamentally change CAISO's existing market design, and will result in a lack of comparable access to transmission service for imports and for wheel-through transactions in at least two distinct ways:

- Delivery of energy to Southwest LSEs under a wide range of procurement arrangements will not qualify as Priority Wheeling Through transactions, and will thus receive inferior access to CAISO transmission service than imports, including imports of spot market energy purchases by LSEs in the CAISO BAA and the CAISO itself.

- The narrow subset of procurement arrangements that do qualify as Priority Wheeling Through transactions will "share" that priority with *all* imports accepted under California's permissive RA program, including import contracts for "paper capacity" that provide neither "firm supply" forward commitments nor the commitment of external firm transmission service required of Priority Wheeling Through transactions.

4. Priority Wheeling Through Transactions Will Not Have "Priority Equal To CAISO Load"

Closer review of the CAISO's proposal regarding the treatment of Priority Wheeling Through transactions shows that they will not receive access to CAISO transmission service that is comparable to the priority afforded to imports when the CAISO BAA faces supply shortages. Unlike the default treatment for "standard" wheel-through self-schedules, Priority Wheeling Through transactions will not face an explicit cost disadvantage relative to imports when competing to be allocated transmission service in the day-ahead market. However, the day-ahead commitments of transmission service the Priority Wheeling Through transactions *do* obtain will still be subject to curtailment in real-time in order for the CAISO to accept additional imports in real-time—imports that did not successfully compete for CAISO transmission service in the day-ahead market. Such a result is discriminatory, and will occur when imports to serve CAISO load are less economic in the day-ahead market or are not bid in the day-ahead market at all, or if CAISO LSEs under-schedule their demand on a day-ahead basis (such that scheduled demand can be met without the imports). These outcomes are summarized in the table below:

Access To Transmission Service For Priority Wheeling Through Transactions

DA Market Bids

DA Priority Wheeling Through	**DA Import Bid**	**DA Load**	**Equitable Outcome**	**CAISO Proposal**
Self-scheduled Priority wheel	Self-scheduled import	Self-scheduled load	Equal priority allocation between Priority wheel and imports to meet CAISO load	Equal priority allocation between Priority wheel and imports to meet CAISO load, *but* **Priority wheel is subject to further curtailment in real-time** to make space for additional imports
Self-scheduled Priority wheel	Import **not** self-scheduled	Self-scheduled load	Priority wheel receives DA market award	Priority wheel receives DA market award, *but* **Priority wheel is subject to further curtailment in real-time** to make space for additional imports
Self-scheduled Priority wheel	Self-scheduled import	Load **under-scheduled**	Priority wheel receives DA market award	Priority wheel receives DA market award, *but* **Priority wheel is subject to further curtailment in real-time** to make space for additional imports

Further, the process for the real-time curtailment of transmission service allocated to Priority Wheeling Through transactions is also discriminatory. CAISO's proposed formula for this curtailment is based on the proportion of real-time Priority Wheeling Through transactions relative to real-time RA import offers. But whereas real-time Priority Wheeling Through transactions are capped to no more than 10% above the level of day-ahead awards, the RA imports bids are not limited in this manner.[26] The proposed formula thus skews the post-HASP allocation process so that the final transmission service provided to Priority Wheeling Through transactions will be *no more than a pro rata share* of the price-taker requests, but may frequently be less. Several hypothetical examples demonstrating these outcomes are found in **Appendix A**.

5. Filing Mischaracterizes The Priority Of Wheel-Through Transactions Under Its Current Market Design

In both the stakeholder process and in its filing, the CAISO inaccurately describes wheel-through transactions as having priority to flow ahead of imports needed to serve load in the CAISO BAA:

> [T]he parameters in the market software, in combination with the wheeling through constraint that ensures the import and export side of the wheeling through transaction remain equal, effectively *provide wheeling through transactions that clear the day-ahead market a higher priority* than CAISO load.[27]

This mischaracterization also appears in the final opinion of the CAISO's Market Surveillance Committee on the filing:

> As things currently stand, *all self-scheduled wheel-through transactions would have the highest priority for access* to the CAISO system, despite not having purchased firm transmission service. Absent changes in this design, the penalty prices used to schedule wheels in the IFM and HASP could cause *imports serving native load to be reduced before any self-scheduled wheel transaction would be curtailed.*[28]

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[26] Filing, Transmittal Letter at 68-69.

[27] *Id.* at 7 (Emphasis added).

[28] Opinion on Market Enhancements for Summer 2021 Readiness, Market Surveillance Committee of the California ISO at 11 (Apr. 16, 2021) (Emphasis added, internal footnote omitted).

This interpretation of existing requirements is not supported by any tariff provisions, rules, procedures or business practices. The claim of wheel-through "super-priority" under the *status quo* is, at best, misguided. Rather, in each of the CAISO's sequential markets, self-scheduled imports to serve demand are given equal priority to self-schedule wheel-through transactions. What has been inaccurately labeled by CAISO and MSC as wheel-through transactions having priority is, in fact, CAISO's current practice of upholding the commitment of transmission service to all customers that successfully compete for it and receive awards in the day-ahead market. While all awards of CAISO transmission service remain subject to curtailment in the event of transmission de-rates or forced outage, the CAISO's current market design does not involuntarily curtail day-ahead transmission awards in order to re-allocate that transmission to a different customer in real-time. A careful review of the published penalty prices demonstrates that the *status quo* affords equal opportunity for imports serving CAISO load to compete with wheel-through transactions in the CAISO's day-ahead and real-time markets for transmission service.

As a result, the statements of the CAISO and MSC give an incorrect impression regarding the need for—and the intended purpose of—the CAISO proposal.

6. CAISO's Proposal Will Create Additional Reliability Risk And Dissolve Existing OATT Priority On External Systems

The CAISO contends that "[t]he proposed enhancements are vital to maintaining reliability and avoiding load shedding this summer during severely constrained conditions."[29] It is important to recognize, however, that any reliability benefits of the proposal will flow to LSEs in the CAISO BAA at the direct expense of external LSEs and the customers that they serve. Indeed, CAISO's proposal results in the use of its transmission function to solve the core delivery and supply risks it outlined in its January 2021 CPUC filing.[30]

If CAISO's proposed tariff revisions are implemented, some portion of the otherwise undeliverable and potentially unavailable imports needed to serve load in the CAISO BAA will now be granted access across the multi-state north-south transmission corridor ahead of firm point-to-point priority OATT schedules. CAISO's filing does not acknowledge that this is a natural consequence of its proposal. Specifically, by curtailing the wheel-through schedules of firm energy that would otherwise be delivered to the CAISO's northern borders on high-priority firm point-to-point OATT transmission, CAISO's proposal will "strand" Northwest supply that has been committed to meet the needs of Southwest LSEs during Summer 2021, forcing open additional space on the external Northwest transmission corridor for non-firm use that in turn reduces or eliminates the delivery risk CAISO has repeatedly outlined in its CPUC filings. And the proposed new curtailment priority also resolves the <u>supply</u> risk CAISO has identified as a key consequence of the CPUC's failure to require the procurement of <u>source-specific</u> import RA supply. By curtailing wheel-through schedules intended to deliver firm energy to load in external Southwest regions, CAISO's proposed tariff revisions effectively "free up" the previously-

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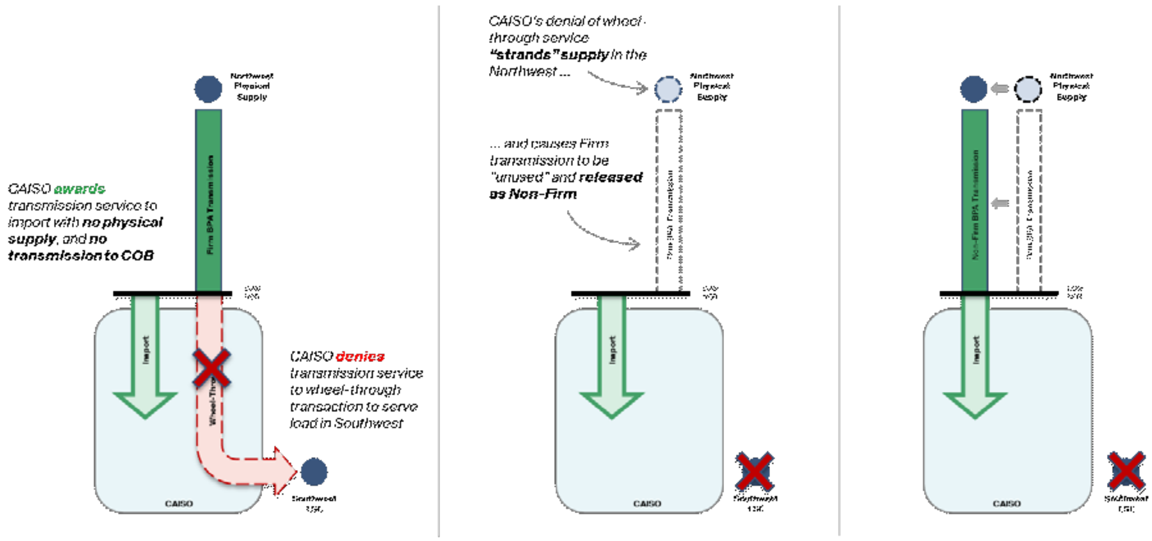
[29] Filing at 3.

[30] *See supra* note 16 and accompanying text.

committed Northwest firm supply, making it available for real-time procurement—either by marketers that have entered into "paper capacity" import RA contracts with CAISO LSEs or by the CAISO itself in service of load in its BAA, as depicted below.



Southwest LSE has procured forward *physical supply and Firm transmission from the Northwest, but is* ***denied wheel-through transmission service by CAISO proposal***

CAISO denial of transmission service to wheel-through *"strands" supply and prevents Firm transmission from being used ...*

... causing supply and transmission to become available for real-time imports into the CAISO BAA

As shown in the above example(s), the CAISO seeks to effect a dramatic reshaping of supply and transmission allocation throughout the western region for Summer 2021, along with the associated reliability consequences. Under the CAISO proposal, BAAs in the Southwest will face routine uncertainty and an unknown level of potential imminent delivery failures, eliminating the assurances their LSEs have secured over the last six months through their prudent forward contracting efforts. In effect, CAISO's solution to its in-state procurement problem shifts a quantity of its own reliability risk – and the substantial costs associated with such events – onto neighboring BAAs. In addition, CAISO's solution effectively upends the OATT priority structure that the remainder of the west relies upon for just and reasonable access across the primary transmission corridors that link the western region's broad, multi-state market. And for Northwestern suppliers, CAISO's solution frustrates existing bilateral contractual commitments for their generation resources, forcing these external suppliers into a position in the spot-market timeframe where the CAISO BAA becomes the only "reachable" destination market for a previously-dedicated portion of their surplus supply.

B. CAISO's Proposal Is Unduly Discriminatory And Contrary To Commission Policy

1. CAISO's Proposal Is Inconsistent With Open Access Principles And Must Be Rejected

CAISO's proposal would substitute the Commission-approved competitive system for awarding transmission (that has long ensured open access to the CAISO grid) with new rules that are designed to favor the interests of CAISO LSEs over other users of the grid. These rules would:

- Allow CAISO to preferentially allocate the entire capacity of an intertie to self-scheduled imports serving load in the CAISO BAA over competing self-schedules for wheel-through service; and
- Allow CAISO to "rescind" transmission service it awards in the day-ahead market to wheel-through schedules in order to make additional transmission capacity available for real-time imports into the CAISO BAA—imports that, by definition were either not offered, were not economic or were not needed to serve CAISO bid-in demand in the day-ahead market.

The result will be to allow CAISO to shift reliability challenges from California to external regions by interrupting deliveries of supply being wheeled through the CAISO markets to serve the needs of external LSEs during peak periods.

CAISO's proposal is unduly discriminatory and preferential on its face, as it blatantly discriminates against external suppliers and LSEs in order to provide preferential access to the CAISO transmission grid to CAISO LSEs and the CAISO. A tariff may only be found to be not unduly discriminatory or anticompetitive if it provides "third parties access on the same or comparable basis, and under the same or comparable terms and conditions, as the transmission provider's uses of its system."[31] The CAISO proposal contravenes this principle by prioritizing imports serving CAISO load and "bumping" wheel-through customers that are awarded transmission service in the day-ahead market in order to create additional capacity to support additional spot market imports serving load in the CAISO BAA. The purpose and effect of these measures is clear: to limit the access of third parties to utilize the CAISO grid during the Summer 2021 period to deliver energy to LSEs outside of the CAISO. Such a result is fundamentally incompatible with the requirement that CAISO provide all customers with comparable access to the transmission grid.

The proposal also is inconsistent with FERC policy requiring *pro rata* curtailment of firm service and native load. A key aspect of the open access policies adopted in Order Nos. 888 and 890 is the requirement that network and firm point-to-point customers must be curtailed on a basis comparable to the curtailment of service to native load customers.[32] As the Commission has explained, "[a]n essential element of non-discriminatory transmission access is the right of transmission

[31] *See, e.g., American Electric Power Serv. Corp.*, 67 FERC ¶ 61,168 at 61,490, *clarified*, 67 FERC ¶ 61,317 (1994).

[32] *Preventing Undue Discrimination and Preference in Transmission Serv.,* Order No. 890, 118 FERC ¶ 61,119 at P 1138, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) ("[I]f a reliability problem does arise, any curtailment of firm point-to-point transmission service must be on a nondiscriminatory and pro rata basis with the treatment of network service and native load."); *North American Electric Reliability Council,* 88 FERC ¶ 61,046 at 61,123-24 (1999) (determining that comparability principle requires *pro rata* curtailment);

customers to reserve and purchase transmission service that is of the same quality as that used by the transmission provider in serving its wholesale requirements customers and retail load."[33] For that reason, the *pro forma* OATT requires that a transmission provider curtail service to customers taking firm transmission service "on a basis comparable to the curtailment of service to the Transmission Provider's Native Load Customers."[34]

CAISO's proposal contravenes these requirements by curtailing firm wheel-through schedules ahead of imports to serve native load. Because wheel-through schedules awarded through the day-ahead market constitute a firm use of the CAISO grid, FERC policy dictates that these schedules must be curtailed on a basis comparable with native load customers. The result of the proposal, however, would be to curtail firm wheel-through schedules prior to any curtailment of native load customers. In fact, the express purpose of CAISO's proposal is to ensure that firm wheel-through schedules awarded through the day-ahead market are given a lower priority than import transactions serving load within California. Such a result is fundamentally inconsistent with the open access requirements set out in Order Nos. 888 and 890.

CAISO asks the Commission to ignore the tension between its proposal and open access requirements by claiming that its proposal is necessary to maintain

[33] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,746 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

[34] Order No. 890-B, Appendix B, Pro Forma Open Access Transmission Tariff, Section 13.6

reliability and appropriately recognizes that CAISO LSEs—unlike wheel-through customers—pay for, and depend upon, the costs of the CAISO grid. CAISO's arguments are fatally flawed and must be rejected.

For one thing, CAISO's proposal will do *nothing* to protect reliability in the western region. CAISO's proposal merely allows CAISO to shift reliability challenges from the CAISO grid to systems in the Southwest relying on the delivery of energy over the CAISO grid to meet the needs of their native load customers. By limiting the ability of external entities to obtain non-discriminatory transmission service over major transmission paths connecting the Northwest and the Southwest, CAISO's proposal will increase reliability risks throughout the west.

Moreover, the Commission has repeatedly rejected arguments that transmission providers should be permitted to elevate the interests of native load over firm users of the grid in order to preserve reliability or to reflect the contribution of native load in recovering the embedded costs of the grid. Indeed, in both Order Nos. 888 and 890, commenters argued that requiring comparable treatment of firm customers and native load would impair the ability of transmission providers to meet their service obligations and "unfairly exalt[] non-native customers at the expense of the native load that financed the transmission system."[35] CAISO's filing ignores that the Commission has rejected these arguments on the basis that requiring comparable treatment of native load and other firm users of the grid is necessary to

[35] Order No. 890-A at P 20.

ensure that *all* LSEs are able to obtain the transmission necessary to support deliveries to serve their customers.[36]

The solution to the reliability challenges facing the CAISO is not to deprive Southwest LSEs of the firm transmission access that they are depending on to deliver the supply necessary to meet their native load obligations. Ultimately, the solution is to ensure that California's RA program is designed in a manner that provides LSEs with the incentive and the ability to compete to obtain forward commitments of the supply necessary to meet system needs. While Powerex appreciates the magnitude of the challenge facing the CAISO, the CAISO cannot be permitted to compensate for the shortcomings of the RA program by adopting rules that transparently elevate the reliability and economic interests of CAISO LSEs over other users of the grid.

2. CAISO's Proposal Cannot Be Justified By Reference To The Ability To Reserve Transmission For Native Load

Adopting the arguments initially made by California's investor-owned utilities and other in-state LSEs in related stakeholder proceedings, CAISO attempts to justify its proposal by claiming that it is consistent with Commission precedent permitting transmission providers to reserve capacity to ensure reliable service to their native load. In particular, CAISO points to the ability of transmission providers to reserve capacity for native load as an existing transmission commitment in their available transfer capability ("ATC") calculations, and to set aside a capacity benefit margin to access additional generation during contingencies.[37] According to the CAISO, the

[36] Order No. 890-A at P 24 (finding that the Commission's policies "appropriately balance the needs of . . . various classes of transmission customers, including the transmission provider's native load, LSE customers serving native load, and other firm users of the system").

[37] Filing, Transmittal Letter at 8.

fact that transmission providers can set aside capacity to meet native load requirements in such situations demonstrates that its proposal here is consistent with open access requirements.

CAISO's reliance on the Commission's OATT precedent is misplaced. The Commission has never found that the ability to take into account native load *when calculating ATC* means that a transmission provider can *rescind* transmission rights that have been granted in order to make additional capacity available to serve native load. Once a transmission provider grants a customer a firm right to use its system, FERC policy requires that the transmission provider treat the customer in a manner comparable to its native load customers.

Moreover, while the Commission does permit transmission providers to take into account native load when calculating ATC, the Commission has not interpreted these rights as giving transmission providers an unfettered right to deny access to transmission capacity when they determine doing so may be necessary to ensure reliable service to native load. In fact, the Commission has expressed concern about the potential for transmission providers to abuse these rights by withholding capacity, and has adopted measures to limit the potential for such abuse, including ensuring that any set aside capacity is made available to third parties until it is actually needed and used to meet native load.[38]

[38] Order No. 890 at P 240. Pro Forma OATT, Section 1.26; *Aquila Corp. v Entergy Services, Inc.*, 90 FERC ¶ 61,260, *order on reh'g,* 92 FERC ¶ 61,064, *order on reh'g,* 90 FERC ¶ 61,260; *Wisconsin Public Power Inc. v. Wisconsin Public Serv. Corp.*, 83 FERC ¶ 61,198 (1998).

Notably, the Commission has declined to permit transmission providers to set aside intertie capability to serve native load based on generalized claims about the need to preserve system reliability. Instead, the Commission generally has required transmission providers to demonstrate that a reservation of intertie capacity was necessary to support deliveries from identifiable network resources that were owned or leased by the transmission provider or had been committed to the transmission provider on a firm basis to meet native load requirements.[39]

The Commission has likewise rejected arguments that a transmission provider should be permitted to set aside intertie capability to support short-term spot purchases of energy from adjacent balancing authority areas. For instance, in *Aquila Corp. v Entergy Services, Inc.*, the Commission granted a complaint alleging that Entergy had violated its tariff by reserving all of the firm import capacity at four key interfaces to meet native load.[40] In that case, Entergy set aside 2,000 MW of intertie capacity to support short-term purchases of energy from adjacent BAAs to ensure reliable service to native load and claimed that Order No. 888 gave it discretion to reserve transmission as necessary to meet any legitimate reliability needs of its bundled retail customers. FERC rejected Entergy's reasoning, observing:

[39] *Portland General Elec. Co.,* 131 FERC ¶ 61,224 (2010) (finding that transmission provider violated OATT by setting aside transmission capacity that was not supported by designated network resources). *See also Aquila Corp. v Entergy Services, Inc.*, 90 FERC ¶ 61,260 (finding that transmission provider violated OATT by setting aside transmission capacity that was not supported by designation of network load); *Wisconsin Public Power Inc. v. Wisconsin Public Serv. Corp.,* 83 FERC ¶ 61,198 at 61,858 (noting that "network customers cannot ask that transmission capacity be withheld from other customers so that it will be available to reach resources that they do not own or control").

[40] 90 FERC ¶ 61,260.

> Based on a generalized claim of reliability, Entergy . . . reserved virtually all of the firm interface capacity on four key interfaces, even though it had no off-system network resources. Instead, Entergy used its firm transmission reservation to purchase power whenever it was economical for it to do so. Entergy denied all firm transmission requests and entertained non-firm transmission requests only when it was unable to make an economic deal for itself.[41]

Because Entergy did not have any off-system, identified designated network resources, the Commission found that Entergy's broad reservation of intertie capacity was inconsistent with the terms of the OATT and open access requirements.

The Commission similarly should reject CAISO's claim that it should be permitted to limit third party access to the CAISO grid based on claims about the need to maintain service to network load. Similar to the reservation of capacity in *Aquila*, CAISO's proposal goes far beyond simply ensuring that there is sufficient intertie capability available to facilitate deliveries from identified and deliverable RA resources that have been committed to serve load in California. In reality, CAISO's proposal will result in *all* imports serving CAISO load being assigned a higher priority than all wheel-through transactions (other than a limited quantity of CAISO-defined Priority Wheeling Through transactions). It will also allow CAISO to rescind transmission service it awarded in the day-ahead market in order to make intertie capability available to support additional imports in real-time. In effect, CAISO's proposal amounts to a broad claim to preferential access to intertie capability to support short-term imports to serve CAISO load to compensate for the gaps in the existing RA framework.

[41] *Id.* at 61,859.

Even if CAISO's proposal were limited to RA imports—which it is not—the existing RA framework does not provide any assurance that the underlying resources have any of the characteristics typically required for a resource to be designated as a network resource. In particular, in order to satisfy import RA procurement requirements, a seller does not need to:

- Specify a source BAA;
- Specify the physical capacity supporting the sale;
- Demonstrate that the contract is non-interruptible; or
- Demonstrate that the seller has obtained firm transmission to the CAISO boundary.

The lack of any such assurances further undermines any comparison to the ability of transmission providers operating under an OATT to set aside capacity to support deliveries from designated network resources to serve native load.

3. The Creation Of Priority Wheeling Through Transactions Does Not Cure The Deficiencies Of CAISO's Proposal

CAISO attempts to minimize the significance of its departure from the Commission's open access requirements by creating a new category of wheel-through transactions – "Priority Wheeling Through" – that would ostensibly enjoy a priority equal to native load customers in the day-ahead and real-time market optimization process. According to CAISO, the fact that it proposes to curtail transactions to serve native load *pro rata* with Priority Wheeling Through transactions should be sufficient to provide a basis for finding that its proposal is not unduly discriminatory or preferential. The CAISO's reasoning is flawed in numerous respects.

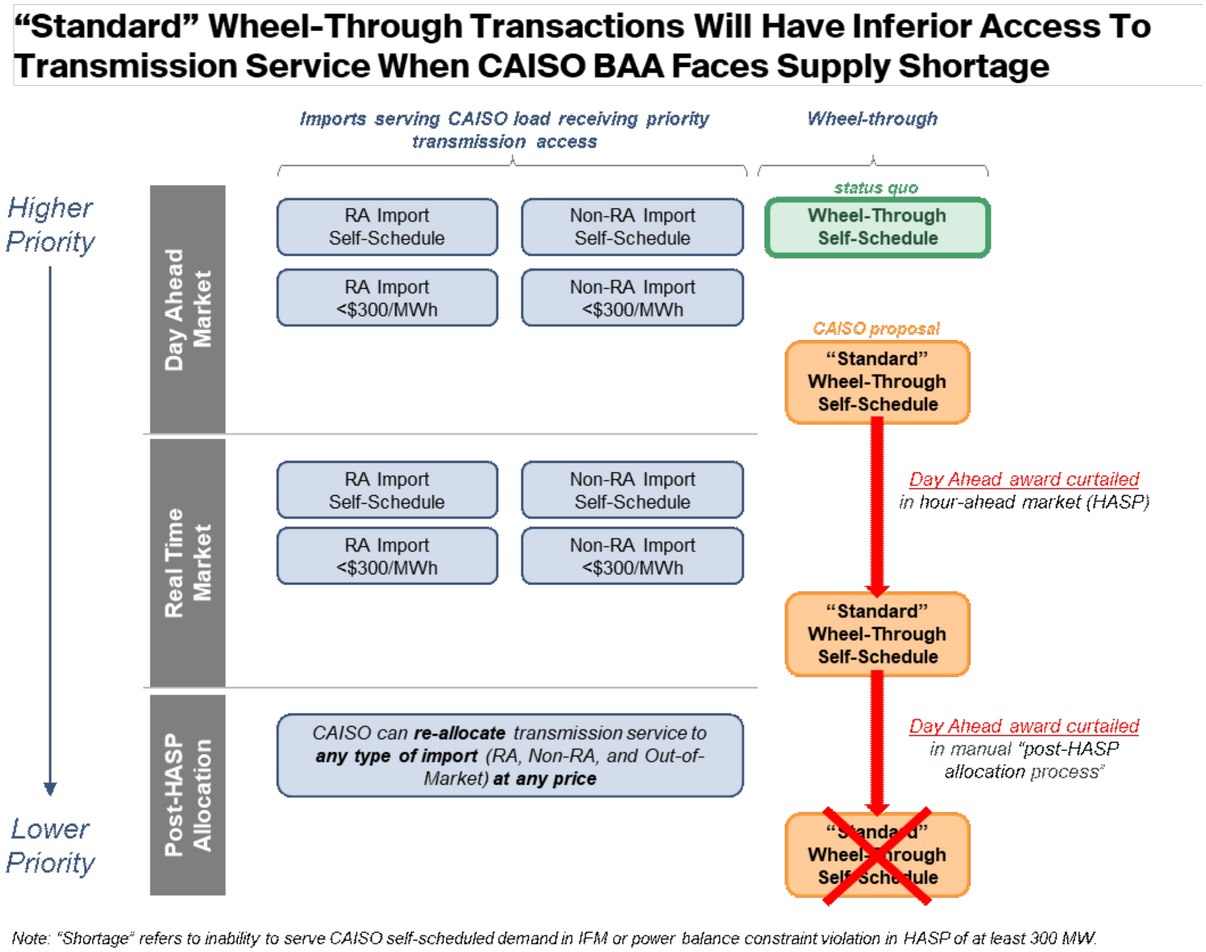
First, even if one accepts CAISO's premise that the only wheel-through transactions that should have equal priority to native load are those that are associated with forward commitments, CAISO's proposal will not achieve this result. In reality, the narrow criteria proposed by the CAISO would exclude a range of forward supply arrangements entered into between Northwest suppliers and Southwest LSEs, including forward supply contracts

- that are executed less than 45 days prior to a calendar month;
- that require delivery only during a subset of peak hours, or when requested by the purchaser; or
- transactions that depend on daily firm transaction to support delivery.

There simply is no basis for making the ability of LSEs to obtain access to the CAISO grid dependent on whether their forward commitments—which may have been entered into months before CAISO conceived of changing the rules governing transmission access for wheel-through schedules—conform to an unduly narrow set of forward contracting requirements.

To require external LSEs to demonstrate that their contracts conform to these standards would be particularly inequitable here given that application of these same requirements to CAISO LSEs has been steadfastly—and, thus far, successfully—opposed (both in CPUC proceedings and in the CAISO's own stakeholder processes). If priority on the CAISO grid is to depend on whether a transaction meets these requirements, then it is not clear that RA imports should be given a higher priority than wheel-through schedules supporting deliveries to Southwest LSEs that—unlike CAISO LSEs—have actually required their counterparties to demonstrate that their transactions are supported by real identified physical supply and firm transmission service.

Second, the fact that a small subset of wheel-through transactions may meet these requirements does not change the fact that CAISO's proposal will result in the curtailment of other, firm wheel-through schedules that would otherwise be accepted, in order to create additional intertie capacity for import transactions that have not successfully competed for the right to use the CAISO grid. For instance, under the CAISO's proposal, the CAISO will have the ability to displace economic wheel-through awards in order to accept: (1) RA imports that were not economic (*i.e.*, offered at a higher price than the wheel-through award); (2) non-RA imports; and (3) out-of-market intertie awards.



Importantly, at the time that CAISO will curtail these firm wheel-through schedules, none of the transactions that will be permitted to "step in front" of wheel-through customers will have successfully competed for the right to use the CAISO grid. In short, the fact that a limited subset of wheel-through schedules will be respected under CAISO's proposal does not change the fact that its proposal will result in firm wheel-through schedules being curtailed for no reason other than they are being used to support deliveries to regions outside of California.

C. CAISO's Proposal Violates The Commission's Rule Of Reason Policy

In its filing, CAISO acknowledges that the scheduling priorities for transactions clearing the CAISO markets are determined by the penalty prices assigned to various classes of transactions in the CAISO market optimization. Despite this recognition, however, CAISO does not propose to revise its tariff to incorporate the penalty prices that will be applied to determine the scheduling priorities of load, exports, or wheel-through transactions. Instead, CAISO appears to assume that it is appropriate to relegate the penalty prices that will determine the priority assigned to these transactions to an unfiled business practice manual and operating protocols, which it has the ability to unilaterally modify, and has previously done so on multiple occasions.[42]

CAISO's decision to exclude the pricing parameters used to determine the proposed scheduling priority from its tariff violates the Federal Power Act ("FPA"). As the Commission has explained, the FPA requires that "all practices that significantly affect rates, terms, and conditions of service to be on file with the Commission, and these practices must be included in a Commission-accepted tariff rather than other documents.[43] In determining whether a particular practice needs to be included in a tariff on file with FERC, FERC applies its "Rule of Reason" policy. Under the Rule of Reason, provisions that "significantly affect rates, terms, and conditions of service, are readily susceptible of specification, and are not generally understood . . . must be included in the tariff."[44] In contrast, "items better classified as implementation details may be included only in the business practice manual[s]."[45]

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[42] Filing, Transmittal Letter at n.79.

[43] *Demand Response Coalition v. PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,061 at P 17 (2013).

[44] *Energy Storage Association v. PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,296 at P 108 (2018).

[45] *Id.*

The pricing parameters that determine the relative scheduling priorities of transactions in the CAISO markets cannot be characterized as mere implementation details, and must be filed with the Commission. The Commission previously has held that parameters that are used by market software to determine what schedules clear the market or are subject to adjustment must be filed for Commission approval.[46] While CAISO proposes to revise its tariff to reference the priority order of wheel-through schedules, load, and exports, the reality is that the *actual* priority given to these transactions will depend on the penalty prices applied to these schedules by the CAISO when operating its market. In other words, modifications that CAISO makes to these pricing parameters could have the effect of completely unwinding the priority order set out in the Tariff.

There is no basis on which to conclude that the pricing parameters used by CAISO for the purpose of determining priority are not reasonably susceptible to specification. In fact, CAISO's Tariff already includes tariff provisions specifying the values that are used by CAISO to determine whether to adjust demand or supply bids in certain circumstances.[47] There is no reason why the pricing parameters that are used by CAISO to determine the relative scheduling priority of wheel-through schedules, exports, and loads cannot similarly be included in the CAISO Tariff.

CAISO may claim that there is no basis for incorporating these pricing parameters into the tariff because these values historically have been specified in the CAISO manuals. However, the fact that CAISO has historically elected to relegate

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[46] *Cal. Indep. Sys. Operator Corp.,* 126 FERC ¶ 61,147 (2009) (requiring CAISO to revise tariff to include thresholds applied to determine priority of economic bids and self-schedules);

[47] *See, e.g.,* CAISO Tariff, Sections 27.4.3.1 and 27.4.3.6.

these pricing parameters to an unfiled business practice does not mean that doing so is consistent with the FPA or that this practice should continue going forward. As the Commission has recognized, rules or practices that have been left to unfiled business practices must be incorporated into the tariff when it is later determined that the rules or practices at issue have a significant effect on the rates, terms, or conditions of service. For example, in *ANP Funding I, LLC v. ISO New England, Inc.,* the Commission directed ISO New England, Inc. ("ISO-NE") to file revisions to its operating practices for approval under Section 205 of the FPA despite the fact that it had previously determined that the operating practices at issue did not need to be filed, explaining:

> Previously, the Commission ruled that NEPOOL did not have to file its OPs in its tariff. However, we note that, as we gain experience with market rules and procedures and a better understanding of how operating procedures may actually affect rates or service, over time the Commission may need to exercise its discretion under the rule of reason differently. Here, ANP's complaint has focused our attention on the effects of the revisions to the OPs. We conclude that OP20 and revised OP5 could significantly affect rates and services. The revisions could affect compensation that generators receive under Market Rule 1 by limiting the circumstances under which they can declare economic outages. Consequently, we find that the revisions must be filed under section 205 of the FPA. The Commission will act expeditiously on any such section 205 filing.[48]

Recent experience with the CAISO markets has highlighted the need for additional transparency and Commission oversight over the pricing parameters that CAISO applies to determine the priority of different transactions within its market. As CAISO acknowledges in its filing, over the past year, CAISO has made a number of changes to its business practice manuals—in some case with little notice to

[48] 110 FERC ¶ 61,040 at PP 22 (2005).

stakeholders—to modify the scheduling priorities assigned to export schedules.[49] Powerex does not seek to litigate the merits of these changes in this proceeding. It is important to recognize, however, that such changes can have a profound effect on the reliability of external balancing authority areas by determining whether deliveries that they are counting upon to meet their needs will be curtailed by the CAISO.

Given the tight system conditions that exist in the west and the importance of the CAISO grid to securing the reliability of the broader region, it is critical that the Commission exercise oversight over such changes to ensure that pricing parameters assigned to different transactions are not unduly discriminatory or preferential and do not have adverse consequences for regions outside of the CAISO.

[49] Filing, Transmittal Letter at n.74.

III.
CONCLUSION

Wherefore, for the foregoing reasons, Powerex requests the Commission issue an order consistent with the protest above.

Respectfully submitted,

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On Behalf of Powerex Corp.

May 19, 2021

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 19th day of May, 2021.

***/s/*Tracey Bradley**

Appendix A

The extensive nature and impact of the CAISO's proposal is reflected in the numerous different situations under which customers seeking to wheel-through the CAISO grid will be denied transmission service despite submitting competitive bids into the CAISO markets, with CAISO instead preferentially awarding transmission service to an import serving CAISO load that *did not* submit a more economic bid.

The following hypothetical examples all assume an intertie with a capability of 1,000 MW in the import direction.

"Standard" Self-Scheduled Wheel-Through Transactions

Example 1: Day-Ahead Self-Scheduled "Standard" Wheel-Through and Self-Schedule Import

First, consider a 200 MW self-scheduled "standard" wheel-through submitted into the day-ahead market, competing for transmission service with 1,000 MW of self-scheduled imports needed to meet self-scheduled CAISO demand. The wheel-throughs and imports are price-takers (*i.e.,* willing to pay any price to be awarded service); and the wheel-throughs and imports all represent day-ahead transactions that are not part of any forward arrangement or RA contract. Under an equitable, non-discriminatory, open access framework, there is no basis for distinguishing between these self-schedules, and all would receive service on some *pro rata* basis. Under the CAISO proposal, however, the wheel-through self-schedules would be denied transmission service if the self-scheduled demand in the CAISO BAA could not be met.

Example 2: Day-Ahead Self-Scheduled "Standard" Wheel-Through and Imports Offered at $200/MWh

In this example, the 1,000 MW of imports needed to meet CAISO self-scheduled demand are not self-scheduled, but are offered in at a price of $200/MWh. Under a framework where transmission customers compete for service, the wheel-through self-schedules would unambiguously receive transmission service. Under the CAISO's proposal, however, the $200/MWh imports would receive service *ahead of* the price-taker wheel-through schedules if the self-scheduled demand in the CAISO BAA could not be met.

These first two examples are the result of the CAISO's proposal placing a higher value on serving load within its own BAA than on serving load in other BAAs.[50]

Example 3: Day-Ahead Self-Scheduled "Standard" Wheel-Through and Imports Offered at $500/MWh

In this example, the 1,000 MW of imports needed to meet CAISO self-scheduled demand are offered at $500/MWh. As in Example 2, a framework where transmission customers compete to acquire service would grant service to the wheel-through self-schedules. And under the CAISO's proposal, the wheel-throughs *would*

[50] Based on the illustrative penalty price the CAISO provided during the stakeholder process, the value of serving self-scheduled demand in the day-ahead Integrated Forward Market is $1450/MWh, whereas the value of delivering a standard wheel-through schedule to an external BAA is $1150/MWh. *See* Filing, Attachment G, Appendices. This means that the CAISO will award day-ahead transmission service to imports needed to meet self-scheduled demand at a price of up to $300/MWh before awarding service to a self-scheduled (*i.e.*, price taker) standard wheel-through transaction.

receive a day-ahead market award.[51] But in real-time, the transmission service allocated to the wheel-through schedules in the day-ahead market would be cut if the CAISO BAA faced a supply shortfall and additional imports were needed at that intertie to meet CAISO demand. Cutting the schedules would "release" 200 MW of transmission service on the intertie, allowing the CAISO to accept an additional 200 MW of real-time imports. Note that the curtailment of transmission service awarded to standard wheel-through schedules occurs *regardless* of the price of the real-time imports.

Example 4: Day-Ahead Self-Scheduled "Standard" Wheel-Through and No Competing Imports Offered At All

In this example, there are no import offers in the day-ahead market at all. Under a non-discriminatory competitive transmission framework, the wheel-through self-schedules would be awarded transmission service in the day-ahead market; and the same will occur under the CAISO's proposal. However, as described in example 3, the CAISO will still curtail this transmission service in real-time if it faces a supply shortage and additional imports were needed at that intertie to meet CAISO demand.

Priority Wheeling Through Transactions

The following hypothetical examples illustrate outcomes under the CAISO's proposal for Priority Wheeling Through transactions. The CAISO proposes that, if

[51] At $500/MWh, accepting the imports to serve self-scheduled demand in the CAISO BAA would be evaluated as less economic than accepting the wheel-through schedule that serves demand in an external BAA.

the HASP fails to produce a feasible market solution, it will curtail Priority Wheeling Through transactions based on the proportion of such transactions relative to offers from RA imports. For this reason, the following examples assume that 1,000 MW of RA imports have been contracted on the intertie.

Example 5: Day-Ahead Priority Wheeling Through Transactions And No Import Self-Schedules

In this example, there are 500 MW of Priority Wheeling Through transactions submitted in the day-ahead market, and no import self-schedules (*i.e.,* all imports are offered at a price). Under the CAISO proposal, the Priority Wheeling Through transactions would be allocated transmission service day-ahead. In the day-ahead Residual Unit Commitment process, the CAISO anticipates a supply shortage in the CAISO BAA, and issues RUC schedules to all 1,000 MW of RA imports, requiring the submission of energy bids in real-time. In the real-time HASP process, the transmission service awarded day-ahead to Priority Wheeling Through transactions could not be involuntarily displaced by the market optimization, even if the solution required relaxing the power balance constraint (*i.e.,* the CAISO load forecast could not be met). But a supply shortage after the HASP would trigger the CAISO's proposed "post-HASP allocation process," where the Priority Wheeling Through transactions would be curtailed from the 500 MW of service they competitively obtained in the day-ahead market to a final amount of 333 MW, based on the volume of submitted Priority Wheeling Through transactions (500 MW) as a proportion of the sum of the Priority Wheeling Through transactions (500 MW) and the RA import offers (1,000 MW).

Thus, 167 MW of transmission service that was competitively awarded in the day-ahead market will be involuntarily and preferentially re-allocated to imports. Notably, nothing in the CAISO proposal requires that the real-time imports that are delivered on the transmission capability re-allocated from the Priority Wheeling Through transactions must be RA imports—they can be additional voluntary imports offered into the real-time market, or they can be out-of-market purchases undertaken by the CAISO itself.

Example 6: Day-Ahead Priority Wheeling Through Transactions And Under-Scheduling By CAISO LSEs

In this example, there are 500 MW of Priority Wheeling Through transactions submitted in the day-ahead market, and 1000 MW of import self-schedules. However, CAISO load-serving entities submit demand self-schedules for substantially less than the forecast consumption of their customers; that is, they under-schedule.[52] Under the CAISO proposal, the Priority Wheeling Through transactions would be allocated 500 MW of transmission service day-ahead, and the remaining 500 MW of transmission service would be awarded to imports. In the day-

[52] *See, e.g.,* CAISO, California Public Utilities Commission, and California Energy Commission *Final Root Cause Analysis: Mid-August 2020 Extreme Heat Wave*, at 5 ("The practices which obscured the tight physical supply conditions included under-scheduling of demand in the day-ahead market by load serving entities or their scheduling coordinators[.]") Despite the Root Cause Analysis recommending that measures be developed by summer 2021 to "[a]ddress under-scheduled CAISO load in the day-ahead market" (pp.71-22) , none of the CAISO's initiatives to address summer 2021 readiness deal with under-scheduling.

ahead Residual Unit Commitment process, the CAISO would recognize that the LSEs' self-scheduled demand was materially less than its forecast of load, which could not be met without additional imports. The CAISO would issue RUC schedules to all 1,000 MW of RA imports, requiring the submission of energy bids in real-time. As in Example 5, a supply shortage in the HASP would trigger the post-HASP curtailment process, which again would curtail transmission service allocated day-ahead to Priority Wheeling Through transactions from 500 MW to 333 MW.

Example 7: Day-Ahead Priority Wheeling Through Transactions And Import Self-Schedules Needed To Serve CAISO Demand

In this example, there are 500 MW of Priority Wheeling Through transactions and 1,000 MW of import self-schedules, all of which are needed to serve the self-scheduled demand of CAISO LSEs. The CAISO would allocate day-ahead transmission service among all self-scheduled uses of the intertie, as all of the self-schedules have the same "value" based on the applicable penalty prices. Nothing in the CAISO proposal ensures that day-ahead transmission service is allocated *pro rata*, however; the use of identical penalty prices simply means that all possible allocations provide the same "value." That is, the day-ahead solution could award transmission service to all 500 MW of Priority Wheeling Through transactions, or to 0 MW (or somewhere in between).

Regardless of the day-ahead allocation: (1) RUC schedules will be issued to all RA imports, requiring submission of a bid in real-time; and (2) the HASP will face a supply shortage, triggering the post-HASP curtailment of Priority Wheeling Through transactions that receive a day-ahead allocation of transmission service. The table below summarizes the final post-HASP curtailment values under a range of different (but equally plausible) day-ahead transmission service awards to Priority Wheeling Through transactions:

Post-HASP Curtailment Of Day-Ahead Priority Wheeling Through Awards

All scenarios assume day-ahead market receives:
500 MW Priority Wheeling Through self-schedules and
1,000 MW RA import self-schedules

Priority Wheeling Through Day-Ahead Award (MW)	Priority Wheeling Through Post-HASP Allocation (MW)	Priority Wheeling Through Post-HASP Allocation (% of Intertie Capacity)
500	333	33%
333	250	25%
0	0	0%

The above examples show that the post-HASP curtailment process can only work in one direction: to *reduce* the transmission service that was allocated to Priority Wheeling Through transactions in the day-ahead market. It will do this even if that day-ahead allocation was already for an equitable *pro rata* share relative to equally competitive requests for service. And where the day-ahead allocation is for less than an equitable *pro rata* share of comparable requests, the post-HASP allocation does not increase transmission service allocated to Priority Wheeling Through transactions in order to achieve a *pro rata* allocation.

Ultimately, a *pro rata* share of comparable requests for service is *the most* that Priority Wheeling Through transactions will receive, but under many scenarios, they will receive far less than this equitable *pro rata* share. This is contrary to CAISO's claim that the post-HASP process will "allocate available transmission capacity *pro rata* between supply needed to meet CAISO load and Priority Wheeling Through transactions."[53]

[53] CAISO Transmittal Letter, at 7.

Document Content(s)